

### **REMARKS**

Applicant respectfully requests reconsideration. Claims 19-39 were previously pending in this application. Claim 19 has been amended to recite that the cytosine of the 5'-cytosine-guanine-3' motif is unmethylated, that the oligonucleotide has a length of 8 to 100 nucleotides, and that the oligonucleotide has at least one internucleotide linkage having a phosphate backbone modification. These amendments find support throughout the specification, for example on page 14, lines 1-2, in cancelled claim 12, and on page 16, lines 9-26. No claims have been cancelled or added. Claims 19-39 are still pending for examination with claim 19 an being independent. No new matter has been added.

#### **Rejection Under 35 U.S.C. 112**

Claims 19-39 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Solely to expedite prosecution, and without acceding to the merits of the rejection, Applicant has amended independent claim 19 to recite that the oligonucleotide has a 5'-cytosine-guanine-3' motif where the cytosine of the 5'-cytosine-guanine-3' motif is unmethylated, a length of 8 to 100 nucleotides, and at least one internucleotide linkage having a phosphate backbone modification. Thus, it is believed that the rejection of these claims and the claims dependent therefrom is moot, and it is respectfully requested that the rejection of these claims be withdrawn.

#### **Double Patenting**

Claims 19-39 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 42-47, 49-53, 56, 57, 82-85, 90, 92, 94, 96, 98, 100, 102 and 103 of copending Application No. 09/337584.

Applicants will consider filing a terminal disclaimer if the claims are allowed.

Claims 19-39 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 46, 52, 64, 71, 72, 74 and 80

of copending Application No. 10/613739 ("the '739 application"). The cited application is now abandoned. Thus, it is requested that the rejection be withdrawn.

Claim 19-39 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22, 23, 31, 32, 34-37 of copending Application No. 10/769282. It is requested that the rejection be held in abeyance until allowable subject matter in any of the cited applications is identified.

Claims 19-39 also have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-29 and 31-33 of copending Application No. 10/894862. It is requested that the rejection be held in abeyance until allowable subject matter in any of the cited applications is identified.

**CONCLUSION**

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. A one month extension of time is necessary for filing this response. The Director is hereby authorized to charge the fees for the one month extension of time as well as any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. C1039.70073US00.

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Respectfully submitted,

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